APPEAL NO. 020530
FILED APRIL 10, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 19, 2002. The hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on April 16, 2000, with a 0% impairment rating (IR) (the amended IR of the designated doctor). The claimant appealed, urging that the correct IR is 24% as certified by the designated doctor in his initial report, which should be given presumptive weight. The respondent (carrier) filed a response, urging affirmance of the hearing officer's determinations.

DECISION

Affirmed.

The claimant testified that she had been employed by the employer for over 40 years as a data entry clerk and that she sustained a compensable injury in the form of bilateral carpal tunnel syndrome (CTS) due to the repetitive job duties of typing and answering the phone. The parties stipulated that the claimant sustained a compensable injury on _____, and that Dr. T is the Texas Workers' Compensation Commission (Commission)-selected designated doctor. The parties did not dispute that the statutory date of MMI is April 16, 2000.

The medical reports reflect that on April 21, 2001, the designated doctor certified that the claimant reached MMI on February 21, 2001, with a 24% IR. On April 30, 2001, the carrier's required medical examination doctor, Dr. E, reviewed Dr. T's report regarding the IR and opined that Dr. T incorrectly assigned a 24% IR according to the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). Dr. E opined that Dr. T incorrectly applied a two-point discrimination at 5.0 mm for sensory impairment when the AMA Guides require a two-point discrimination at 10.0 mm; that a deficit for motor loss was incorrectly included in the IR since there was no motor involvement shown by the EMG testing; that CTS is a nerve entrapment injury and should only be rated for nerve involvement and not range of motion (ROM); and that there was no documented injury of the shoulder to show a significant loss of ROM of the shoulder. Essentially, Dr. E opined that "an [IR] of 24% for a simple nonsurgical repetitive motion disorder is in my opinion, out of the normal standard in evaluation [sic] this particular type of injury." On July 18, 2001, the Commission sent a letter to Dr. T seeking clarification of the claimant's IR based on Dr. E's medical report. On July 30, 2001, Dr. T responded that he agreed with Dr. E's medical report and changed his prior certification of 24% IR to 0% IR to comply with the AMA Guides. Essentially, Dr. T opined that

> [a]s a consequence, on reassessment I believe that the patient has no impairment awarded for her [CTS] bilaterally on the basis of the 10mm two

> point discrimination test and the failure of the EMG to demonstrate motor abnormalities. . . . [and that] [i]n view of a stricter definition consistent with the rest of the examination, there is no impairment awardable for loss of [ROM] of her wrists bilaterally as that too appears to be totally dependent upon pain from the carpal tunnel.

On August 23, 2001, the claimant's treating doctor, Dr. W, examined the claimant and certified that the claimant reached MMI on February 21, 2001, with a 20% IR. On October 18, 2001, the Commission sent a letter to Dr. T seeking further clarification from him of the claimant's IR, based on Dr. W's report. On November 12, 2001, Dr. T responded that his "final rating continues to [be] 0%."

The hearing officer did not err in determining that the correct IR is 0% based upon the amended report by Dr. T. Section 408.125(e) provides that if the designated doctor is chosen by the Commission, the report of the designated doctor shall have presumptive weight, and the Commission shall base the IR on that report unless the great weight of the other medical evidence is to the contrary, and that, if the great weight of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Commission, the Commission shall adopt the IR of one of the other doctors. Dr. T reevaluated and recertified the claimant's IR based on a proper application of the AMA Guides. Under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)), the designated doctor's response to a Commission request for clarification is also considered to have presumptive weight as it is part of the designated doctor's opinion. *See also* Texas Workers' Compensation Commission Appeal No. 013042-s, decided January 17, 2002. The hearing officer determined that the great weight of the other medical evidence is not contrary to the designated doctor's amended report. The opinion of the treating doctor that the claimant has a 20% IR represents a difference in medical opinion and simply does not rise to the level of the great weight of the other evidence contrary to the designated doctor's amended certification of a 0% IR. As such, the hearing officer did not err in giving presumptive weight to the designated doctor's report in accordance with Section 408.125(e).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge